

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
September 13, 2005 Session

**GLENN E. BILYEU v. VOLUNTEER STATE BANK**

**Appeal from the Chancery Court for Sumner County**  
**No. 2003C-307     Tom E. Gray, Chancellor**

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**No. M2004-01040-COA-R3-CV - Filed April 17, 2006**

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This appeal involves a dispute between a guarantor and a bank regarding the continuing enforceability of his guaranty. The guarantor filed suit in the Chancery Court for Sumner County asserting that a bank officer made an oral promise to relieve him of this guaranty obligation. The bank denied the allegation and moved for a judgment on the pleadings on the ground that the guarantor's claims violated the statute of frauds in Tenn. Code Ann. § 29-2-101(b)(1) (2000). The trial court granted the motion and dismissed the guarantor's claims. The guarantor has appealed. We affirm the dismissal of the guarantor's complaint.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Allen Barnes, Nashville, Tennessee, for the appellant, Glenn E. Bilyeu.

John H. Lowe and Paul W. Duty, Goodlettsville, Tennessee, for the appellee, Volunteer State Bank.

**MEMORANDUM OPINION<sup>1</sup>**

**I.**

Glenn E. Bilyeu and Linda Bilyeu owned Absolute Carpets, Inc. In October 2001, they borrowed \$144,000 for their business from Volunteer State Bank. The Bilyeys used their marital home on New Chapel Road in Springfield, Tennessee to secure the loan. In addition, they provided

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<sup>1</sup>Tenn. Ct. App. R. 10 provides:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

their separate personal guaranties for the loan. When the Bilyeus were divorced in October 2002 in the Chancery Court for Robertson County, Ms. Bilyeu received the marital home on New Chapel Road and the Absolute Carpets business.

Mr. Bilyeu desired to purchase the marital home from Ms. Bilyeu. He discussed borrowing additional funds to finance the purchase with Mr. West, an officer of Volunteer State Bank. He also requested to be relieved of liability for the loan to Absolute Carpets because Ms. Bilyeu had received the business in the divorce. Mr. Bilyeu recalled that Mr. West assured him that he “would not have to worry about it [the business loan] any more.” Mr. West recalls the conversation differently. His version is that he told Mr. Bilyeu that he would not be relieved from liability for the business loan and that he would not be approved for another loan to purchase the house.

In late 2002, Mr. Bilyeu purchased the marital home from Ms. Bilyeu for \$80,000 along with forgiveness of the \$100,000 Ms. Bilyeu owed him for his share of Absolute Carpets. At the time of his transaction, Mr. Bilyeu believed that the marital home was free from any encumbrances stemming from Volunteer State Bank’s loan to Absolute Carpets.

In early 2003, Absolute Carpets defaulted on its loan to Volunteer State Bank. The bank accelerated the note and demanded immediate payment. When Absolute Carpets failed to pay the note, Volunteer State Bank demanded that Mr. Bilyeu pay \$146,802.82 - the entire amount of the note plus interest. In response, Mr. Bilyeu filed a complaint in the Chancery Court for Sumner County seeking to enjoin the bank from foreclosing on the property. The bank filed an answer denying that it had orally relieved Mr. Bilyeu of his personal obligations as maker and guarantor or that it had agreed to release the marital home as security for the loan to Absolute Carpets. Thereafter, the bank filed a Tenn. R. Civ. P. 12.03 motion for judgment on the pleadings asserting that Mr. Bilyeu’s claims violated the statute of frauds in Tenn. Code Ann. § 29-2-101(b)(1) (2000). The trial court granted the bank’s Tenn. R. Civ. P. 12.03 motion and dismissed Mr. Bilyeu’s complaint.

Mr. Bilyeu takes issue on this appeal with the trial court’s decision to grant the bank’s motion for judgment on the pleadings. When reviewing orders granting a Tenn. R. Civ. P. 12.03 motion, the courts use the same standard used to review orders granting a Tenn. R. Civ. P. 12.02(6) motion to dismiss for failure to state a claim. *Waller v. Bryan*, 16 S.W.3d 770, 773 (Tenn. Ct. App. 1999). Accordingly, we must review the trial court’s decision de novo without a presumption of correctness, *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997), and we must construe the complaint liberally in favor of the non-moving party and take all the factual allegations in the complaint as true. *Conley v. State*, 141 S.W.3d 591, 594 (Tenn. 2004); *Stein v. Davidson Hotel*, 945 S.W.2d at 716. We should uphold granting the motion only when it appears that the plaintiff can prove no set of facts in support of a claim that will entitle him or her to relief. *Cook v. Spinnaker’s of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994).

Despite the trial court’s failure to explain its legal reasoning, it is reasonable to infer that the court dismissed Mr. Bilyeu’s complaint based on the statute of frauds in Tenn. Code Ann. § 29-2-

101(b)(1)<sup>2</sup> because Volunteer State Bank's motion was premised only on that ground. A written instrument covered by the statute of frauds may be reformed only by another written instrument. *Pierce v. Flynn*, 656 S.W.2d 42, 47 (Tenn. Ct. App. 1983); *see also Eslick v. Friedman*, 191 Tenn. 647, 655, 235 S.W.2d 808, 812 (1951) (holding that satisfaction of the statute of frauds required the entire agreement to be in writing, not partly in writing and partly in parole).

Both the promissory note and Mr. Bilyeu's personal guaranty fall within the scope of the statute of frauds. *See In re Estate of Dickerson*, 600 S.W.2d 714, 716-17 (Tenn. 1980). Accordingly, their terms can be altered only by another written agreement signed by the parties. Mr. Bilyeu has failed to come forward with any written instrument alleviating him of his personal obligations for the October 2001 loan to Absolute Carpets. He cannot rely on the theory of promissory estoppel because he has failed to produce admissible evidence supporting his claim that Mr. West excused him from his personal responsibility for the Absolute Carpets loan. Accordingly, the trial court properly granted the bank's Tenn. R. Civ. P. 12.03 motion for judgment on the pleadings.

We affirm the trial court's November 22, 2003 order dismissing Mr. Bilyeu's complaint and remand this case for any further proceedings consistent with this opinion. We tax the costs of this appeal to Glenn E. Bilyeu for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., P.J., M.S.

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<sup>2</sup>Tenn. Code Ann. § 29-2-101(b)(1) states:

No action shall be brought against a lender or creditor upon any promise or commitment to lend money or to extend credit, or upon any promise or commitment to alter, amend, renew, extend or otherwise modify or supplement any written promise, agreement or commitment to lend money or extend credit, unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the lender or creditor, or some other person lawfully authorized by such lender or creditor.